IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.4902 of l989

Mrs Gangabai Narayan Joshi and ors.. petitioners

vs

The State of Mah and ors.. respondents

Mr S.B.Deshmukh i/b A.V.Anturkar for petitioners

Mr P M Patil AGP for State

Mr. R.G.Ketkar for respondent no.4

CORAM: A.P.SHAH &

S.U.KAMDAR JJ.

16th Sept 2004

P.C:

Heard advocates.

2 The property bearing CTS Nos l50 and l53 situated at Shaniwar Peth, Pune within the local limits of Pune Municipal Corporation is owned by the petitioners. The property of the petitioners has been reserved for the purpose of l00 ft wide public road under the Final Development Plan. This reservation has been maintained in revised Development Plan. The petitioners submitted plan to the Corporation for development of S.Nos. l50 and l53 but permission was declined vide letter

dated 7.2.l987 on the ground that the property is reserved for l00 ft wide public road in the Development Plan of Pune City. The petitioners issued a purchase notice dated l2.ll.l987 under section 49 of the Maharashtra Regional Town Planning Act, l966, hereinafter referred to as "the Act".However, this notice was rejected by the State Government vide order dated 9.5.l988. The legality and propriety of the said order dated 9.5.l988 is questioned in the present petition under Article 226 of the Constitution.

3 Mr. Deshmukh, learned counsel appearing for the petitioners submitted that despite clear provision of section 49 of the Act no opportunity of hearing was given to the petitioners and on that limited ground this petition deserves to be allowed and the Government should be directed to reconsider the petitioners application cum notice given under section 49 of the Act. The learned AGP Mr. Patil fairly conceded that the impugned order was passed without affording opportunity of hearing to the petitioners. Mr. Patil submitted that the State Government will grant opportunity to the petitioners and then pass appropriate order in accordance with law.

4 Mr. Ketkar ,learned counsel appearing for the Corporation however, brought to our notice that the Corporation has made a proposal to State Government to cancel reservation for public road as requirement of the said road does not survive any longer. He stated that the proposal submitted by the Corporation is under consideration of the State Government.

5 In our opinion the proposal made by the Corporation is required to be decided first and if the reservation for public road is deleted then the petitioners' grievance would not survive. Therefore we direct the State Government to decide the proposal of the Corporation for deletion of reservation for l00 ft public road within a period of three months from today. If reservation is deleted then the petitioners will be entitled to develop the property in accordance with law as per the development rules. However, if the reservation is retained then the State Government will hear the petitioners afresh on notice under section 49 and shall pass appropriate orders, in accordance with law within 2 months after decision is taken on the proposal made by the Corporation.

6. Petition is accordingly disposed of.